IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA BIG STONE GAP DIVISION

DAVID STANLEY,)
) Case No. 2:06CV00031
Plaintiff,)
) OPINION AND ORDER
V.)
) By: James P. Jones
GERALD LEE GRAY, ET AL.,) Chief United States District Judge
)
Defendants.)

David Stanley, Pro Se Plaintiff.

This action was concluded in this court on February 11, 2007, when motions to dismiss were granted. *Stanley v. Gray*, No. 2:06CV00031, 2007 WL 445366 (W.D. Va. Feb. 11, 2007). The pro se plaintiff duly noted an appeal. On July 17, 2007, he filed in this court a "Motion to Amend [the] Pending Appeal and Introduce Newly Discovered Evidence into the Official Record."

This court has no power to change the record on appeal by adding material that was not part of the proceeding in this court. *See* Fed. R. App. P. 10(e) (describing circumstances under which record on appeal may be corrected or modified). Treating the motion as one under Fed. R. Civ. P. 60(b)(2) for relief from the judgment on the basis of newly discovered evidence, it will be denied.¹ Even accepting the new

¹ This court has jurisdiction to consider and deny as meritless a Rule 60(b) motion when an appeal is pending. *See Fobian v. Storage Tech. Corp.*, 164 F.3d 887, 891 (4th Cir. 1999).

allegations as true for the purposes of the motion, they would not have made any

difference in the resolution of the case.

Accordingly, for the reasons stated, it is ORDERED that the Motion is

DENIED.

ENTER: July 23, 2007

/s/ James P. Jones

Chief United States District Judge

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